



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-S-W-

DATE: NOV. 20, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a neuroscience researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before us on appeal. The appeal will be sustained.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On appeal, the Petitioner submits a brief and additional evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Petitioner received a Ph.D. in Neuroscience (2007) from [REDACTED] in South Korea. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” *Matter of New York State Dep’t of Transp. (NYSDOT)*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Petitioner has established that her work as a neuroscience researcher in an area of substantial intrinsic merit and that the proposed benefits of her research to develop treatment methods for neurodegenerative diseases would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner’s own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether this petitioner’s contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner’s achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on April 29, 2014. At the time of filing, the Petitioner was working as a postdoctoral fellow at the [REDACTED]

at [REDACTED]

The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner seeks to continue her research at [REDACTED] to develop improved medical therapies for treating neurological diseases. The record includes documentation of numerous journal articles that the Petitioner has written or co-written, and evidence demonstrating that her published work has been extensively cited. For example, according to a Google Scholar citation index submitted on appeal, the Petitioner's published articles have been cited to 775 times by others in the field. In addition, the Petitioner provided various reference letters discussing her work in the field.¹

Regarding the Petitioner's planned research activities, [REDACTED] Associate Professor of Neuroscience, [REDACTED] stated: "[The Petitioner] joined my lab as a postdoctoral fellow in March 2013. [The Petitioner's] main line of research is to investigate the role of CD36 receptor in stroke.... These interesting studies could potentially lead to stage specific therapy to treat stroke patients." With respect to the Petitioner's prior research work, [REDACTED] asserted:

[The Petitioner] was able to determine that dbcAMP is mediated through both protein kinase A-dependent and -independent pathways. This was a groundbreaking outcome as it demonstrated to researchers that cAMP modulates microglia activation in a diverse and complex manner. As such, researchers have been able to more clearly understand how to use anti-inflammatory agents to control microglia activation that contribute to numerous diseases affecting the brain. This has been critical to producing more effective therapies for Alzheimer's disease, Parkinson's disease, multiple sclerosis, stroke, and brain trauma.

In regard to the Petitioner's work to advance treatments for nervous system conditions, [REDACTED] Assistant Professor of Pediatrics, [REDACTED] indicated that the Petitioner has "made significant progress in this area through her research on the function of matrix metalloproteinases, or MMPs, in microglial activation and neuronal cell death." [REDACTED] further stated: "[The Petitioner's] findings . . . show that intervening to inhibit MMP-3 and MMP-9 would be an excellent therapeutic strategy for treatment of inflammatory diseases in the nervous system caused by over-activation of microglial cells." In addition, [REDACTED] explained the significance of the Petitioner's findings concerning the tissue inhibitor of metalloproteinase (TIMP-2):

[The Petitioner] found that TIMP-2 over-expression attenuated cell deaths and conferred a greater degree of protection on neuron cells. She also reported that TIMP-2 expression

¹ We discuss only a sampling of these letters, but have reviewed and considered each one.

was significantly reduced in mRNA and protein levels in cells killed by neurotoxins. In effect, [the Petitioner] revealed for the first time . . . that TIMP-2 plays a neuroprotective role in dopaminergic neuronal cell death. Practically speaking, it also offers a new therapeutic strategy based on TIMP-2 expression enhancement to treat Parkinson's disease.

_____ and _____ Distinguished Professor and Chair, Department of Pediatrics, _____ also indicated that the Petitioner discovered "that TIMP-2 is useful in treating neurodegenerative diseases such as Parkinson's disease." Furthermore, regarding the Petitioner's work on MMP-9 inhibitors, _____ stated that the Petitioner's "research has expanded the approaches that researchers can use to treat brain tumors effectively." Additionally, _____ Professor, Department of Molecular Medicine, _____ commented on the Petitioner's influential work with MMP inhibitors. Specifically, _____ asserted that the Petitioner was able to show "that MMP-3 and MMP-9 inhibition would be constructive approaches for limiting inflammation connected to neurological disease" and that the Petitioner "produced considerable breakthroughs in locating substances that can control MMP-9, which causes astrogloma" (malignant tumors in the brain and spinal cord).

_____ a principal investigator in the Department of Experimental Surgery at the _____ and Editor-in-Chief of _____ mentioned the Petitioner's study concerning the effects of curcumin on MMP-9. _____ stated that the Petitioner's findings "indicate that curcumin can be used as an effective therapeutic agent in brain tumor treatment and control" and that curcumin's "incorporation into medical therapies is imminent." _____ further stated that he has "relied upon [the Petitioner's] work" and that it "represents a true pioneering achievement in showing how curcumin's molecular activity produces extremely beneficial consequence[s] in treating cancerous cells." The Petitioner's appellate submission includes a Google Scholar citation index reflecting that her article entitled "Curcumin suppresses phorbol ester-induced matrix metalloproteinase-9 expression by inhibiting the PKC to MAPK signaling pathways in human astrogloma cells" has been cited to 133 times by others in the field. An extensive number of favorable independent citations for an article authored by a petitioner is an indication that other researchers are familiar with her work and may have been influenced by it.

_____ Professor, Department of Neurology, _____ stated that the Petitioner's "research demonstrated that inhibition of CD36 is not a good therapeutic target for protection after acute neonatal stroke." In addition, _____ explained that the Petitioner's work "provided new insights on CD36 signaling during neonatal stroke that can be used to develop new strategies and alternative therapeutic targets to treatment."

_____ Assistant Professor, Department of Cellular and Molecular Medicine, _____ asserted that the Petitioner "devised and inventive ginseng saponin metabolite" known as _____ further stated:

Matter of M-S-W-

[The Petitioner] observed that [REDACTED] suppressed the in vitro invasiveness of glioma cells, which proves that [REDACTED] can be used as a treatment to control the growth and invasiveness of brain tumors. This is a monumental finding in brain tumor research and finally provides the field with a method that can be used for treatment purposes in brain tumor patients.

The aforementioned letters of support and extensive citation of the Petitioner's work by others in the field are sufficient to demonstrate that the Petitioner's research has had a degree of influence on the field of neuroscience. In addition, the letters provided by the Petitioner give context to her work and explain its importance in ways that the additional evidence in the record otherwise corroborates. The submitted documentation establishes the significance of this Petitioner's research, as opposed to the general area of research, and identifies specific benefits attributable to her work that have influenced the field as a whole. We therefore find that the Petitioner's past record of achievement justifies projection that she will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

IV. CONCLUSION

As discussed above, the evidence in the record demonstrates that the benefit of retaining this petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of M-S-W-*, ID# 14487 (AAO Nov. 20, 2015)